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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,481	04/12/2004	Debra L. Holte	HOLTEI	3032

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EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 08/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/822,481

Applicant(s)

HOLTE, DEBRA L.

Examiner

Son T. Nguyen

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 5/25/06.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 27-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 27-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

SON T. NGUYEN
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 27,29,40-42** are rejected under 35 U.S.C. 103(a) as being unpatentable over DeBellis et al. (5836654) in view of Feibus (5685257).

or claim 27, DeBellis et al. teach a cushion that is capable of being use for a pet, the cushion comprising a slow recovery, porous, visco-elastic foam padding layer 40a (col. 12, lines 15-20); a supporting layer 30 made of a stabilizing material, a top of the supporting layer received next to a bottom of the foam padding layer (see fig. 6A); a waterproof, breathable, flexible material protective liner 50 (col. 12, lines 28-36,col. 13, lines 37-50,55-58), the liner received over a top of the foam layer and over a bottom of the supporting layer, the liner preventing an absorption of liquids and allowing airflow into the foam layer; a cover 60 enclosing the foam layer, supporting layer and the liner. The cover 60 of DeBellis et al. can be washed since it is a shower cap-like cover (col. 13, line 64). However, DeBellis et al. are silent about the cover 60 being made out of washable fabric material.

Feibus teaches a cushion for a pet comprising an outer cover 12,30 that is made out of washable fabric (col. 3,lines 15-20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the cover of

DeBellis et al. out of a washable fabric material as taught by Feibus, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (to allow a user to wash the cover) as a matter of obvious choice. In re Leshin, 125 USPQ 416.

For claim 29, DeBellis et al. as modified by Feibus (emphasis on DeBellis et al.) further teach the padding layer being comprised of a foam material (col. 13, line 39).

For claim 40, DeBellis et al. as modified by Feibus (emphasis on DeBellis et al.) further teach wherein said fabric cover has a releasable closure (col. 13, lines 60-67, col. 14, lines 1-2) so that said fabric cover may be removed from the said padding of slow recovery visco-elastic foam, said padding of stabilizing support material, and said protective liner, for washing.

For claim 41, DeBellis et al. as modified by Feibus (emphasis on DeBellis et al.) further teach wherein said fabric cover is comprised of a top surface, a bottom surface, and peripheral side walls disposed between said top and bottom surfaces (see fig. 1 of ref. 60).

For claim 42, DeBellis et al. as modified by Feibus (emphasis on DeBellis et al.) further teach wherein said waterproof, breathable, and flexible protective liner is sealed closed around said padding layer of slow-recovery visco-elastic foam and said supporting padding layer in such a close-fitting and tight manner that the protective liner does not allow for the inner padding layers, of said slow recovery visco-elastic foam and said supporting stabilizing material, to shift or move about within the mid protective liner (col. 12, lines 28-36, col. 13, lines 37-50, 55-58).

3. **Claim 28** is rejected under 35 U.S.C. 103(a) as being unpatentable over DeBellis et al. as modified by Feibus as applied to claim 27 above, and further in view of McMahon (EP622018).

DeBellis et al. as modified by Feibus are silent about the supporting padding layer being a textile-based material.

McMahon teaches a cushion for a pet comprising a padding layer 14b,24b; a supporting padding layer 12b,22b; a protective liner 12a,14a,22a,24a; a fabric cover 12,14,22,24. In addition, McMahon further teaches the padding layer is a textile based material (col. 4, lines 15-28). It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the supporting padding layer of DeBellis et al. as modified by Feibus out of a textile based material as taught by McMahon, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. In re Leshin, 125 USPQ 416.

4. **Claim 30** is rejected under 35 U.S.C. 103(a) as being unpatentable over DeBellis et al. as modified by Feibus as applied to claim 27 above, and further in view of Jordan (5226384).

DeBellis et al. as modified by Feibus are silent about the supporting padding layer being a rubber material.

Jordan teaches a pet bed made out of a rubber material 12. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the supporting padding layer of DeBellis et al. as modified by Feibus out of

a rubber material as taught by Jordan, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. In re Leshin, 125 USPQ 416.

5. **Claims 31-39** are rejected under 35 U.S.C. 103(a) as being unpatentable over DeBellis et al. as modified by Feibus as applied to claim 27 above, and further in view of Samms et al. (article on form PTO-1449, title "High Moisture Vapor Transmission Thermoplastic Polyurethanes").

DeBellis et al. as modified by Feibus are silent about the waterproof, breathable, flexible protective liner being comprised of a hydrophilic laminate/coating, a microporous laminate/coating, a bi-component laminate/coating, a material fabricated from a microfiber of a sufficiently close weave to be waterproof and breathable, a material fabricated with a monolithic membrane, a material that is naturally oleophobic, anti-dust mite, anti-odor, or anti-bacterial, anti-stain, and anti-static.

Samms et al. teach in their article of a known material for textile industry made out of a waterproof, breathable, flexible moisture-vapor-transmission material comprising a hydrophilic laminate/coating, a microporous laminate/coating, a bi-component laminate/coating, a material fabricated from a microfiber of a sufficiently close weave to be waterproof and breathable, a material fabricated with a monolithic membrane, a material that is naturally oleophobic, anti-dust mite, anti-odor, or anti-bacterial, anti-stain, and anti-static. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the liner of DeBellis et al. as modified by Feibus out of a hydrophilic laminate/coating, a microporous

laminate/coating, a bi-component laminate/coating, a material fabricated from a microfiber of a sufficiently close weave to be waterproof and breathable, a material fabricated with a monolithic membrane, a material that is naturally oleophobic, anti-dust mite, anti-odor, or anti-bacterial, anti-stain, and anti-static as taught in Samms et al., since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice.

6. **Claims 43-47** are rejected under 35 U.S.C. 103(a) as being unpatentable over DeBellis et al. (as above) in view of Feibus (as above) and Samms et al. (as above).

For claim 43, DeBellis et al. teach the slow recovery porous visco-elastic foam padding layer, the supporting layer and the cover as described above. Feibus teaches the cover being washable as described above. Samms et al. teach the protective liner being moisture-vapor-transmission (MVT) material. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the cover of DeBellis et al. out of a washable fabric material as taught by Feibus, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (to allow a user to wash the cover) as a matter of obvious choice. In re Leshin, 125 USPQ 416. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the protective liner of DeBellis et al. out of a moisture-vapor-transmission (MVT) material. as taught by Samms et al., since it has been held to be within the general skill of a worker in the art to select a known material

on the basis of its suitability for the intended use as a matter of obvious choice. In re Leshin, 125 USPQ 416.

For claims 44-47, the limitation as claimed have already been described above, so please see the above.

Response to Arguments

7. Applicant's arguments with respect to claims 1-26, which have been canceled have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Son T. Nguyen
Primary Examiner
Art Unit 3643

stn